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In the Supreme Court of the United States

OCTOBER TERM, 1979

HALLEY I. THOMAS, PETITIONER

v.

WASHINGTON GAS LIGHT COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) is unreported; it is noted in the table at 598 F.2d 617. The final opinion of the Benefits Review Board (Pet. App. 3a-8a) is reported at 9 B.R.B.S. 760. The Board's earlier opinion, remanding the case to the administrative law judge for further consideration (Pet. App. 16a-19a), is unreported. The administrative law judge's original interlocutory (Pet. App.

34a-50a) and final opinions (Pet. App. 20a-32a) and his supplemental opinion on remand from the Board (Pet. App. 9a-13a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 1979. The petition for a writ of certiorari was filed on July 24, 1979, and was granted on November 26, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Full Faith and Credit Clause bars an award of workers' compensation in one jurisdiction following an award in another jurisdiction whose statute states only in general terms that the benefits it provides are the exclusive remedy against the employer.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

1. Article IV, Section 1 of the Constitution provides in relevant part:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

2. 28 U.S.C. 1738 provides in relevant part:

> Such Acts, records and judicial proceedings [of a state court] or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

3. Section 1 of the District of Columbia Workmen's Compensation Act of May 17, 1928, ch. 612, 45 Stat. 600, 36 D.C. Code § 501 (1973), provides:

> The provisions of the Longshoremen's and Harbor Workers' Compensation Act, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

4. Section 5 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 905, provides in relevant part:

> (a). The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death * * *.

5. The Virginia Workmen's Compensation Act, Va. Code §§ 65.1-1 to 65.1-152 (1973 Repl. Vol. & 1978 Cum. Supp.), provides in relevant part:

> § 65.1-40. Employee's rights under Act exclude all others.—The rights and remedies herein granted to an employee when he and his employer have accepted the provisions of this Act respectively to pay and accept compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury, loss of service or death.

STATEMENT

Petitioner, a resident of the District of Columbia since 1949, was hired by respondent Washington Gas Light Company as a heavy laborer at its employment office in Washington, D.C., in January 1970. Although petitioner sometimes worked in the Virginia and Maryland suburbs of the District of Columbia, approximately 60% of his duties were performed in the District (A. 36a-37a).

On January 22, 1971, petitioner was breaking concrete with an air hammer in Arlington, Virginia, when he sustained a disabling injury to his back. He has been totally disabled ever since (A. 31a).[1]

[1] Less than a year after the injury, petitioner attempted to perform clerical work in one of respondent's offices. He was unable to do the necessary stooping and bending, however, and was forced to give up the job (A. 38a).

Two weeks after the injury, while still hospitalized, petitioner executed an Industrial Commission of Virginia form entitled "Memorandum of Agreement as to Payment of Compensation," under which respondent agreed to pay him compensation of $62 per week for temporary total disability pursuant to Virginia's workers' compensation law (A. 37a, 49a). On March 15, 1971, the Industrial Commission of Virginia approved the agreement as an award of indefinite duration for temporary total incapacity. Petitioner continued to receive these benefits until they reached the maximum amount payable under Virginia law, Va. Code § 65.1-54 (1973) (A. 45a, 49a). Petitioner is now entitled to no further benefits, either periodic compensation for continuing disability or medical treatment, under Virginia law.

On September 24, 1974, petitioner notified the Deputy Commissioner of the Department of Labor's Office of Workers' Compensation Programs (OWCP) of his intention to seek compensation under the provisions of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, as adopted by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§ 501-502 (1973). Respondent defended on the ground that the Virginia award barred the District of Columbia claim on res judicata principles. The case was submitted for resolution to an administrative law judge of the United States Department of Labor, who rejected respondent's contention that the Full Faith and Credit Clause of the Constitution (Art. IV, § 1) gave the Virginia

award the res judicata effect of barring an additional claim under the District of Columbia Act (A. 50a). Accordingly, the administrative law judge awarded petitioner benefits for permanent total disability from the date of his injury (A. 31a).[2] The amounts paid under the Virginia statute were credited against this award (*ibid.*). On appeal, the Benefits Review Board remanded the case for the taking of additional evidence unrelated to the "full faith and credit" defense (*id.* at 18a). After an additional hearing, the administrative law judge issued a Supplemental Decision and Order again awarding benefits for permanent total disability (*id.* at 9a-13a). The Benefits Review Board affirmed, holding that the Virginia award did not bar the District of Columbia award (*id.* at 8a).[3]

The court of appeals reversed per curiam (A. 2a), relying on *Pettus* v. *American Airlines, Inc.*, 587 F.2d 627 (4th Cir. 1978), cert. denied, No. 78-1739 (Oct. 1, 1979). The facts in *Pettus* were similar to those in this case. The claimant, a resident of the District of Columbia, was injured

[2] Respondent denied liability on the additional ground that petitioner's claim was not timely filed, but the administrative law judge rejected this defense as well (A. 12a-13a, 29a, 31a).

[3] Pursuant to the LHWCA, the Director of OWCP is a party before the Benefits Review Board defending the award and is a party by right in the court of appeals. See *United Brands Co.* v. *Melson*, 569 F.2d 214 (5th Cir. 1978); *Director, OWCP* v. *National Van Lines, Inc.*, No. 78-1259 (D.C. Cir. Nov. 13, 1979), slip op. 4 n.6. But see *I.T.O. Corp.* v. *Benefits Review Board*, 542 F. 2d 903, 906-907 (4th Cir. 1976). See also *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 256 n.11 (1977).

while working at National Airport in Virginia. He was granted workers' compensation payments by the Industrial Commission of Virginia, but the payments were terminated by the Commission on the ground that the claimant had unjustifiably refused to undergo back surgery. The claimant then sought and obtained benefits under the District of Columbia Workmen's Compensation Act. The Fourth Circuit, with one judge dissenting, reversed this award on the ground that it violated the Full Faith and Credit Clause, as implemented by 28 U.S.C. 1738, in failing to give proper effect to the judgment of the Virginia Commission. The court relied on *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430 (1943), for the proposition that a "second and separate proceeding in another jurisdiction upon the same injury after a prior recovery in another State * * * was precluded by the Full Faith and Credit Clause." 587 F.2d at 630. The court held that this proposition was not affected by this Court's subsequent decision in *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947), because the first award in *McCartin* was " 'different in its nature and effect' " from the first award in *Magnolia* and because the second proceeding in *McCartin* "was virtually under stipulations of consent." 587 F.2d at 631.

SUMMARY OF ARGUMENT

A. In *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430 (1943), this Court held that a Texas workers' compensation award acted as a bar to a later supplemental award under the Louisiana workers' compensation statute despite the fact that the amounts

paid under the Texas award had been credited against the amounts awarded in Louisiana. Although the court of appeals held that *Magnolia* is controlling, that decision has no application here. First, the Court's opinion in *Magnolia* explicitly disavowed any consideration of the situation presented in this case, where the law of the first state, Virginia, permits the state to grant supplemental awards itself. Moreover, the effect of *Magnolia* was severely limited by *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947), where the Court held that the Full Faith and Credit Clause barred a subsequent award in another state under *Magnolia* only when the first state, by "unmistakable language" in its statutes or court decisions, explicitly intended that its award preclude supplemental relief under the laws of other jurisdictions.

The Virginia workers' compensation statute contains no "unmistakable language" barring a supplemental award in a second jurisdiction. The general exclusivity provision in the Virginia statute is akin to provisions that exist in all workers' compensation statutes and, indeed, to the provision considered by the Court in *McCartin*. These provisions are generally intended to make the workers' compensation remedy exclusive *within* the state and to preclude ordinary tort actions against the employer arising out of the accident. Other than in this case and *Pettus* v. *American Airlines, Inc.*, 587 F.2d 627 (4th Cir. 1978), cert. denied, No. 78-1739 (Oct. 1, 1979), a case decided by the same panel, no court has ever construed the Virginia statute to bar the applicability of other states' workers' compensation schemes, and

analogous provisions in other jurisdictions have uniformly been held not to have that effect. Accordingly, *McCartin* compels reversal of the decision below.

B. The policies underlying the Full Faith and Credit Clause and workers' compensation statutes suggest that supplemental awards in a second state should be permitted. A second award ordinarily does not infringe on any interest of the first state, whereas barring the award prevents the second state from effectuating the beneficent interests protected by its statute. This is particularly true where (as here) the injured employee is a resident of the second state, which has an important interest in ensuring that such persons do not become public charges. Workers' compensation statutes have traditionally been liberally construed in furtherance of the overriding policy, common to all such statutes, of providing adequate compensation for injured workers.

Indeed, there is room to argue that the workers' compensation area should be considered an exception to general principles of full faith and credit. Ordinarily, the interests of a state as expressed in its statutes and court decisions are given effect, when litigation occurs in a different forum, by the application of choice of law principles. Thus, a judgment of that forum presumably embodies a consideration of the policies of all interested states, and it should be given full effect nationwide. In workers' compensation cases, however, there is no choice of law to vindicate the interests of states other than the forum state. State administrative commissions usually lack jurisdiction to hear claims based on the statutes of another state. See, *e.g.*, Va. Code § 65.1-92 (1973).

The Full Faith and Credit Clause should not prevent a state from ensuring that its legitimate interests are protected by granting an award under its own workers' compensation law simply because an award has been rendered in another state's proceeding.

Finally, the decision of the court of appeals forces a worker to settle for the benefits granted by the first state in which an award is made. This rule has the practical effect of encouraging employers to induce injured employees to file claims in jurisdictions that will not grant them maximum benefits. Because a supplemental award must credit the employer with benefits previously paid pursuant to the first award, the question presented in this case arises only when the injured employee initially chooses the "wrong" forum. A worker who has recently been seriously injured is in no position to make an informed and considered judgment about which jurisdiction will offer him the largest benefits; his immediate concern is to have *some* benefits begin as quickly as possible. The employer, on the other hand, generally is aware of which state's compensation law is most favorable to its interests. A rule permitting successive awards is an equitable solution, because it does no more than permit an employee to gain the benefits that he would have obtained in the first instance in a single state if he had been able to make an informed choice of forum at the time he filed his claim.

ARGUMENT

THE FULL FAITH AND CREDIT CLAUSE DOES NOT PREVENT PETITIONER FROM RECEIVING AN AWARD UNDER THE DISTRICT OF COLUMBIA WORKERS' COMPENSATION STATUTE

A. The Court Of Appeals Failed To Apply The Controlling Decision Of This Court In *Industrial Commission* v. *McCartin*

This Court first considered the availability of successive workers' compensation awards in two different jurisdictions in *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430 (1943). There, a Louisiana resident injured while working in Texas was awarded benefits under the Texas Workmen's Compensation Law. He subsequently brought suit in Louisiana under Louisiana's Workmen's Compensation Law and was awarded the benefits provided in that statute, subject to credit for the amount of the Texas payments. This Court reversed, holding that the Texas compensation award was a bar to recovery in the Louisiana proceeding.

The Court reasoned that Louisiana was required to give the same effect to the Texas judgment that Texas courts would have given it. Because the first award was a final adjudication of the claimant's rights in Texas, he could not recover any further compensation for his injury, even in a different state. The Court found it particularly significant that the Texas statute provided that an employee could not obtain a compensation award in Texas if he had already claimed and received compensation under the laws of another state. 320 U.S. at 435. The Court

added, however, that the case presented "no occasion to consider what effect would be required to be given to the Texas award if the Texas courts held that an award of compensation in another state would not bar an award in Texas." 320 U.S. at 443.

The apparent practical impact of the *Magnolia* decision was that no awards could be made under a state workers' compensation statute if an award had already been made in another state concerning the same injury. This position was in conflict with the prevailing law at the time,[4] and the decision was criticized by commentators.[5] Little more than three years later, however, the effect of *Magnolia* was "severely limited" (see G. Stumberg, *Principles of Conflicts of Laws* 221 (3d ed. 1963)) by this Court's unanimous decision in *Industrial Commission* v. *McCartin*, 330 U.S. 622 (1947).

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[4] See generally 4 A. Larson, *The Law of Workmen's Compensation*, § 85.10 (1978); *Restatement of Conflict of Laws* § 403 (1934); *Magnolia Petroleum Co.* v. *Hunt*, *supra*, 320 U.S. at 458 n.7 (Black, J., dissenting). See, *e.g.*, *McLaughlin's Case*, 274 Mass. 217, 174 N.E. 338 (1931); *Price* v. *Horton Motor Lines, Inc.*, 201 S.C. 484, 23 S.E.2d 744 (1942); *Interstate Power Co.* v. *Industrial Commission*, 203 Wis. 466, 234 N.W. 889 (1931). But see *Magnolia Petroleum Co.* v. *Hunt*, *supra*, 320 U.S. at 441 n.5.

[5] See, *e.g.*, Freund, *Chief Justice Stone and the Conflict of Laws*, 59 Harv. L. Rev. 1210, 1228-1230 (1946); Wolkin, *Workmen's Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern*, 92 U. Pa. L. Rev. 401 (1944) (hereinafter cited as Wolkin). See also Cheatham, *Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co.* v. *Hunt*, 44 Colum. L. Rev. 330 (1944) (hereinafter cited as Cheatham).

In *McCartin*, an Illinois resident was injured while working in Wisconsin. He first sought benefits under Illinois law, and a settlement of his claim was reached with the employer and approved by the Illinois Industrial Commission. The settlement agreement, signed prior to the *Magnolia* decision, stipulated that the claimant's rights under Wisconsin law were not affected. The claimant then was granted a workers' compensation award by the Wisconsin Industrial Commission, which credited the amounts paid under Illinois law against the award. Relying on *Magnolia*, the Wisconsin courts set aside the award. This Court reversed and reinstated the award.

The Court held that *Magnolia* would be controlling only "[i]f it were apparent that the Illinois award was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury * * *." 330 U.S. at 626. The Court found, however, that the Illinois award was "different in its nature and effect from the Texas award" in *Magnolia*. *Id.* at 627. The Texas benefits were "made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state." *Id.* at 626. The Illinois statute, by contrast, provided that "[n]o common law or statutory right to recover damages * * * other than the compensation herein provided * * * shall be available to any employee who is covered by the provisions of this act, * * *." *Id.* at 627. The Court held that this language indicated that the statute was meant to be an exclusive remedy in Illinois, but that it was not "designed to preclude any

recovery by proceedings brought in another state * * *." *Id.* at 627-628. The Court explained (*id.* at 628; emphasis added):

> [I]n light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, * * * we should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. *Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction.* Especially is this true where the rights affected are those arising under legislation of another state and where the full faith and credit provision of the United States Constitution is brought into play.

The Court also noted that the express reservation in the settlement agreement lent additional weight to its decision, but, contrary to the suggestion of the court of appeals in *Pettus* (587 F.2d at 631), it did not rely on that fact as the basis for its ruling. Instead, the Court found that the reservation "spells out what we believe to be implicit in that Act—namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state." 330 U.S. at 630.

McCartin has consistently been understood to permit successive awards of workers' compensation unless the state granting the first award has clearly indicated that its award is intended to preclude a subsequent award under the law of another state. See generally 4 A. Larson, *The Law of Workmen's Compensation* §§ 85.00-85.40 (1978). If the courts or administrative bodies of the first state do not consider their decision to bar an award under a sister state's statute, then the sister state in awarding supplemental benefits is not failing to give "full faith and credit" to any aspect of the first state's judgment, the problem that led to the *Magnolia* decision. As we show below, nothing in the Virginia workers' compensation statute or in decisions of the Virginia courts suggests that a Virginia award is intended to have such a preclusive effect. Accordingly, we submit that the court of appeals erred under *McCartin* in holding that the award of benefits under the District of Columbia Act failed to give full faith and credit to the decision of the Virginia Commission.

At the outset, it is clear that the court of appeals erred in concluding that the decision in this case is controlled by *Magnolia*. As mentioned earlier (see page 12, *supra*), the Court in *Magnolia* explicitly disclaimed deciding what effect would have to be given to the Texas award if Texas law did not provide that an award in another state precluded a Texas award. 320 U.S. at 443. That situation, not considered in *Magnolia*, is presented here. Va. Code § 65.1-61 (1973) provides in part: "if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for

the same injury greater than is provided for in this Act." This provision establishes that workers' compensation payments already granted in another jurisdiction must be credited against an award made for the same injury under the Virginia statute. The provision thus plainly presupposes that Virginia law allows a workers' compensation award following an award in another state. Hence, in direct contrast to the Texas law considered in *Magnolia*, Virginia does not consider a workers' compensation award in another state to prohibit issuance of its own award.

Virginia's treatment of foreign awards in this fashion strongly indicates that it has no policy requiring extension of the exclusivity provisions of its statute to preclude awards in other states. Common sense suggests that Virginia would not intend its award of workers' compensation to prevent a supplemental award in a second jurisdiction if Virginia itself does not treat another state's award as preclusive. Because the Virginia legislature recognized in Section 65.1-61 that Virginia itself will sometimes grant a second award, it is reasonable to expect that the legislature would have expressly provided that other states could not treat Virginia awards in a reciprocal fashion if that were its intent.

The Virginia statute, however, contains no such express provision.[6] Va. Code § 65.1-40 (1973) does con-

[6] Because there is no apparent state interest in precluding a recovery under a sister state's workers' compensation statute, it is not surprising that most states have not enacted such provisions. Nevada, however, has enacted a preclusion provision and its clarity stands in sharp contrast to the lack of any specific provision under Virginia law. Nev. Rev. Stat. § 616.525 (1967) provides (emphasis added):

> *Acceptance of compensation, benefits under chapter by employee injured out of state constitutes release of employer and waiver of common law or statutory remedy provided in another state.*
>
> 1. Anything to the contrary in this chapter notwithstanding, if an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of such employment outside this state, and he, or his dependents in case of his death, accepts any compensation or benefits under the provisions of this chapter, the acceptance of such compensation shall constitute a waiver by such employee or dependents of all rights and remedies against the employer at common law *or given under the laws of any other state*, and shall further constitute a full and complete release of such employer from any and all liability arising from such injury or death.

See also 42 U.S.C. 1651 (c); 5 U.S.C. 8173.

tain a general clause providing that acceptance of workers' compensation benefits "exclude[s] all other rights and remedies of such employee * * * at common law or otherwise, on account of such injury." But this language is substantially identical to a section of the Illinois law held in *McCartin* not to preclude compensation under other state schemes.[7] Indeed, virtually all workers' compensation statutes contain provisions similar to Section 65.1-40, because workers' compensation is intended as a substitute for common law tort recoveries against the employer for work-related injuries. In return for making workers' compensation

[7] The Illinois statute provided that "[n]o common law or statutory right to recover damages * * *, other than the compensation herein provided, shall be available." *Industrial Commission* v. *McCartin*, *supra*, 330 U.S. at 627.

payments, an employer is insulated by these provisions from tort liability for the same injury. There is no reason, however, to extend this protection to the workers' compensation laws of another state. Hence, Virginia state courts have not interpreted the exclusivity provisions of the statute literally to exclude all other remedies that an employee might have,[8] and they have certainly never held that a Virginia award precludes resort to the workers' compensation remedies of a sister state.[9]

Similarly, the federal appellate courts, with the exception of the panel in the *Pettus* case, have held that the Virginia statute does not bar a subsequent recovery under other workers' compensation laws. In *Newport News Shipbuilding & Dry Dock Co.* v. *Director, OWCP*, 583 F.2d 1273 (4th Cir. 1978), cert. de-

[8] See *Fauver* v. *Bell*, 192 Va. 518, 526, 65 S.E.2d 575, 580 (1951), where the Virginia Supreme Court held that a workers' compensation award did not preclude a lawsuit against a party other than the employer.

[9] Indeed, the action of the Virginia Commission in approving the agreement in this case suggests that the Commission did not understand its action to bar recovery under the District of Columbia statute. The benefits available to petitioner in the District are greater than those under the Virginia statute. Hence, an action by the Commission approving the Virginia agreement at the expense of barring a future award in the District would not have been in petitioner's best interest. The Commission would thus have violated Va. Code § 65.1-93 (1973), which provides that an agreement may be approved "only when the Commission * * * is clearly of the opinion that the best interests of the employee or his dependents will be served thereby."

nied, 440 U.S. 915 (1979), the court held that the filing of a claim for workers' compensation under Virginia law, which was denied, did not bar a subsequent award under the Longshoremen's and Harbor Workers' Compensation Act. The court specifically found that the nature of the Virginia exclusivity provision compelled the conclusion that *McCartin*, not *Magnolia*, controlled the consideration of any full faith and credit argument. 583 F.2d at 1278.[10] And in *Director, OWCP* v. *National Van Lines, Inc.*, No. 78-1259 (Nov. 13, 1979), slip op. 14-16 n. 31, the D.C. Circuit explicitly rejected *Pettus* in holding that the Virginia statute did not preclude a second award under the District of Columbia statute after an award has been made in Virginia.

The highest courts of several states have uniformly held that an exclusivity provision phrased in general terms, as is the Virginia statute, lacks the "unmistakable language" required by *McCartin* to support the conclusion that an award under the statute is intended to exclude supplemental relief under the laws of other jurisdictions. See, *e.g.*, *Griffin* v. *Universal Underwriters Insurance Co.*, 283 So.2d 748 (La. 1973), cert. denied, 416 U.S. 904 (1974) (prior Texas award and subsequent judgment suspending

[10] In a supplemental decision on denial of petition for rehearing, the *Pettus* court distinguished *Newport News* on the ground that the claim there had been dismissed by the Virginia Commission on jurisdictional grounds and thus there was no Virginia decision on the merits that barred the subsequent claim. 587 F. 2d at 635.

benefits under it not exclusive of Louisiana supplemental award);[11] *Wood* v. *Aetna Casualty & Surety Co.*, 260 Md. 651, 273 A.2d 125 (1971) (Maryland award is not exclusive of additional award under another jurisdiction's compensation law); *Stanley* v. *Hinchliffe & Kenner*, 395 Mich. 645, 238 N.W.2d 13 (1976) (prior California award not exclusive of Michigan supplemental award); *Cook* v. *Minneapolis Bridge Construction Co.*, 231 Minn. 433, 43 N.W.2d 792 (1950) (prior North Dakota award not exclusive of Minnesota supplemental award); *Cramer* v. *State Concrete Corp.*, 39 N.J. 507, 189 A.2d 213 (1963) (prior New York award not exclusive of New Jersey supplemental award).[12] The federal ap-

[11] The court thus held that the very Texas statute that had been considered in *Magnolia* should not be interpreted to bar a second award in another state in light of *McCartin*. Cf. *Chapman* v. *John St. John Drilling Co.*, 73 N.M. 261, 387 P.2d 462 (1963).

[12] Accord, *Jordan* v. *Industrial Commission*, 117 Ariz. 215, 571 P.2d 712 (Ariz. App. 1977); *City Products Corp.* v. *Industrial Commission*, 19 Ariz. App. 286, 506 P.2d 1071 (1973); *Agee* v. *Industrial Commission*, 10 Ariz. App. 1, 455 P.2d 288 (1969); *McGehee Hatchery Co.* v. *Gunter*, 234 Ark. 113, 350 S.W.2d 608 (1961); *Reynolds Electrical & Engineering Co.* v. *Workmen's Compensation Appeals Board*, 65 Cal. 2d 429, 55 Cal. Rep. 248, 421 P.2d 96 (1966); *Industrial Indemnity Exchange* v. *Industrial Accident Commission*, 80 Cal. App. 2d 480, 485, 182 P.2d 309, 312 (1947); *Industrial Track Builders* v. *Lemaster*, 429 S.W.2d 403 (Ky. 1968); *Ryder* v. *Insurance Co. of North America*, 282 So.2d 771 (La. App. 1973); *Lavoie's Case*, 334 Mass. 403, 135 N.E.2d 750 (1956); *Hubbard* v. *Midland Constructors, Inc.*, 269 Minn. 425, 426 n.1, 131 N.W.2d 209, 211 n.1 (1964); *Sorenson* v. *Standard Construction Co.*, 238 Minn. 68, 55 N.W.2d 630 (1952); *Harrison Co.* v. *Norton*, 244 Miss. 752, 146 So.2d 327 (1962); *Bekkedahl* v. *North Dakota Workmen's Compensation Bureau*, 222 N.W. 2d 841 (N. Dak. 1974); *Spietz* v. *Industrial Commission*, 251 Wis. 168, 28 N.W.2d 354 (1947).

pellate courts have generally concurred. See, *e.g.*, *Director, OWCP* v. *National Van Lines*, *supra*; *Newport News Shipbuilding & Dry Dock Co.* v. *Director, OWCP*, *supra*; *Director, OWCP* v. *Boughman*, 545 F.2d 210, 211 (D.C. Cir. 1976); *Sade* v. *Northern Natural Gas Co.*, 458 F.2d 210, 215 (10th Cir. 1972).[13]

The one exception to this long line of authority is *Gasch* v. *Britton*, 202 F.2d 356 (D.C. Cir. 1953). In that case, a divided court of appeals held that the Maryland Workmen's Compensation Law barred an action under the District of Columbia statute after an award had been made in Maryland. The court's construction of Maryland law, however, was later specifically repudiated by the Maryland courts in *Wood* v. *Aetna Casualty & Surety Co.*, *supra*, which held that the Maryland exclusivity provision does not bar a second award in another state.[14] Moreover,

[13] An analogous issue is whether coverage under the Longshoremen's and Harbor Workers' Compensation Act precludes an award under a state workers' compensation statute. This issue is now before the Court in *Sun Shipbuilding and Dry Dock Co.* v. *Pennsylvania*, probable juris. noted, No. 79-343 (Jan. 7, 1980).

[14] The Maryland exclusivity provision explicitly provided that an award under the act "shall be in lieu of any and all rights of action whatsoever against any person whomsoever." 202 F.2d at 358-359.

the District of Columbia Circuit is now clearly in accord with other courts in construing *McCartin* to allow a second workers' compensation award unless the first state's statute contains "unmistakable language" opposing that result. See *Director, OWCP* v. *National Van Lines, supra.*

In sum, there is no basis for holding the res judicata effect of Virginia's general exclusivity provision to be any greater than that of the numerous other workers' compensation statutes considered above. Accordingly, the court of appeals failed to follow *McCartin* in concluding that the Virginia workers' compensation law excludes a second award under the workers' compensation statute of a sister state, and thus the Full Faith and Credit Clause does not bar the District of Columbia award made to petitioner.

B. The Decision Of The Court Of Appeals Frustrates The Legitimate Policy Interests Of The States In Administering Workers' Compensation Programs

Workers' compensation statutes are designed to provide financial and medical benefits to employees injured in the course of their employment. Rather than having the state and its taxpayers support these employees who are no longer able to work, workers' compensation places the burden of support, within statutory limitations, on the employer and indirectly on the consumers who purchase the employer's products.[15] This Court has traditionally given great deference to a state's strong interest in applying its own workers' compensation statute. Thus, in *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 306 U.S. 493 (1939), the Court permitted the state where the injury occurred to apply its workers' compensation law even though the employee was regularly employed and resided in another state. See also *Carroll* v. *Lanza*, 349 U.S. 408 (1955). And, of course, in *McCartin*, the Court held that a state's interest in applying its workers' compensation laws permits it to grant an award under those laws even after an award has been made to the employee in another state.

The situation presented in this case does not require a court to weigh the competing interests of two states and make a difficult choice as to which state's policy should take precedence. Unlike in *Carroll* v. *Lanza, supra*, there is no conflict in the respective policies underlying the Virginia and District of Columbia statutes. Those policies are identical—to compensate an employee, without proof of fault, for injuries suffered on the job. The only relevant differences between the District of Columbia and Virginia statutes are the Virginia limitations on the amount and duration of the award, but these limitations do not require that a choice be made between the two statutes. Both can be applied without offending the policy of either state.

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[15] Respondent is "self-insured" (see 33 U.S.C. 932) and thus the award in this case provides that it make payments directly to petitioner (A. 31a).

The rule adopted by the court of appeals, however, defeats the District of Columbia interest embodied in the legislative judgment that the amount of benefits provided in the LHWCA is appropriate for injured employees who are covered by the District of Columbia workers' compensation statute.[16] The fact that those amounts differ from the amounts provided under the Virginia statute may be a consequence of differences in local economic and social conditions. See Wolkin, *supra*, at 407. This interest of the District of Columbia in providing the benefits authorized by its statute to an injured employee is not diminished simply because another state has made a lesser award.

The importance of the District of Columbia's interest is demonstrated by the facts of this case. Because of the limitation of the Virginia statute, petitioner is no longer receiving any workers' compensation benefits although he is still unable to work. Because he is a District of Columbia resident, the burden of supporting him, to the extent state support is necessary,

[16] Because respondent carries on employment in the District of Columbia and there is a "substantial connection" (*Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476) between the District and the employment relationship with petitioner, petitioner's injury is within the jurisdiction of the District of Columbia Workmen's Compensation Act (A. 49a).

Respondent has suggested (Br. in Opp. 12-13) that jurisdiction is precluded by the version of Section 3(a) of the LHWCA in effect at the time of petitioner's injury. But it has long been recognized that the jurisdictional limitations of this section, relating to injury on navigable waters and lack of coverage under state law, do not apply to the District of Columbia Act. These limitations are inconsistent with the explicit jurisdictional scope of 36 D.C. Code § 501 (1973); to apply them would make the District of Columbia statute "wholly inoperative and result in an absurdity." *Travelers Insurance Co.* v. *Cardillo*, 141 F.2d 362, 364 (D.C. Cir. 1944).

falls upon the District of Columbia—a burden that would not have been imposed had the District of Columbia been permitted to apply its own workers' compensation law. Thus, the District of Columbia's strong interest in preventing its residents who are injured while working from becoming dependent on the District for support is stymied by the preclusive effect given to the Virginia award. Cf. *Alaska Packers Ass'n* v. *Industrial Accident Commission*, 294 U.S. 532, 542 (1935). Yet this result does not contribute to vindicating any Virginia interest. No Virginia policy, either underlying the workers' compensation statute or otherwise, is implicated in the decision whether to permit the subsequent District of Columbia award.[17] Moreover, permitting successive awards would not create uncertainty or confusion in an area where uniformity is essential, such as the validity of a marriage. See *Williams* v. *North Carolina*, 317 U.S. 287, 299-300 (1942). The court of appeals' holding thus prevents the effectuation of a considered state policy without furthering any countervailing state or federal interest.

[17] The limitation of liability in the Virginia statute may represent a Virginia policy of encouraging companies to locate in Virginia. This policy is not offended by allowing the District of Columbia award to stand. The employer's liability for additional benefits under the subsequent District of Columbia award is purely a consequence of the fact that jurisdiction exists under the District of Columbia workers' compensation statute—the connection with Virginia is of no relevance. If petitioner had refused to accept a Virginia award and had instead chosen to pursue his rights under the District of Columbia statute, he unquestionably would have been entitled to the greater award. See page 29, *infra*.

Successive workers' compensation awards in two states may seem anomalous in light of the preclusive res judicata effect given to judgments in ordinary tort claims and other suits, but this result is proper because workers' compensation actions are themselves an anomaly. Indeed, several commentators have argued that workers' compensation actions should be classified as a specific exception to the general principles requiring one state to give full faith and credit to the judgments of another state. See Cheatham, *supra*, at 341-346; Wolkin, *supra*, at 411; Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 Colum. L. Rev. 153, 176-177 (1949). See also A. von Mehren and D. Trautman, *The Law of Multistate Problems; Cases and Materials on Conflict of Laws* 1460 (1965). Under this theory, a state would not have the power, even by using "unmistakable language" (*Industrial Commission* v. *McCartin*, *supra*, 330 U.S. at 628), to preclude a second state from granting a supplemental workers' compensation award under its own statute.

There are several practical considerations that support such a rule. First, as noted above, granting a supplemental award does no violence to the policies of the first state while enabling the second state to effectuate its own policies. Second, the overriding goal of compensating injured workers, which is common to both states' statutes, is advanced by the supplemental award. The importance of protecting workers is demonstrated by the existence of rules of construction in

favor of coverage of the injured worker. See *Industrial Commission* v. *McCartin*, *supra*, 330 U.S. at 628. Application of a workers' compensation statute certainly should not be barred when there is no doubt as to coverage under the statute. Third, workers' compensation awards are more than a lump sum payment to an employee; they involve a continuing relationship of support in which the state of the worker's residence has a particular interest. See Cheatham, *supra*, at 343-344.

Apart from these practical considerations, there is a strong theoretical basis for treating workers' compensation awards as an exception to general full faith and credit principles. The purpose of the Full Faith and Credit Clause is to smooth the workings of our federal system by mandating, *inter alia*, that the final judgment of one state court shall have the same effect throughout the country. *Sherrer* v. *Sherrer*, 334 U.S. 343, 354-355 (1948). Chaos would ensue if each state could consider a cause of action anew without regard to a prior decision in another state. This policy of full faith and credit necessarily is pursued at some cost to the interests of individual states. However, those interests are not wholly ignored; ordinarily they are taken into account through the mechanism of choice of law. In the trial of an action involving contacts with more than one state, the laws of the states other than the forum state may be applied, depending upon the competing interests of the various states. Thus, even when a state is not the forum state, it has had an opportunity to have

its interests vindicated through choice of its law, and it is then bound to give full faith and credit to the judgment of the forum state.

In the workers' compensation area, the state seeking to make the second award generally has never had an opportunity to have its interests vindicated in the first proceeding. In most cases, the forum state is unable to apply the workers' compensation law of another state, because these cases are typically considered in the first instance by an administrative tribunal that has no jurisdiction to adjudicate questions under other states' statutes. In this case, for instance, Va. Code § 65.1-92 (1973) limits the jurisdiction of the Industrial Commission of Virginia to "questions arising under this Act." [18] Accordingly, only by granting a supplemental award itself can a state ensure that the interests embodied in its own workers' compensation statute are given due consideration. See generally Cheatham, *supra*, at 344; Wolkin, *supra*, at 406-407; Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 Colum. L. Rev. 153, 176-177 (1949). See also *Semler* v. *Psychiatric*

[18] This restrictive jurisdiction is quite logical. Because a workers' compensation award involves not only money, but also various administrative aspects such as supervision of periodic payments and medical care that vary widely from state to state, it would be quite unworkable for one state's system to implement an award pursuant to another state's statute. See Larson, *Constitutional Law Conflicts and Workmen's Compensation*, 1971 Duke L.J. 1037, 1039. Nothing in the Constitution, however, prevents a state from adjudicating questions under the workers' compensation statute of another state. *Crider* v. *Zurich Insurance Co.*, 380 U.S. 39 (1965).

Institute, 575 F.2d 922, 929-930 n.41 (D.C. Cir. 1978).

Finally, the practical consequence of the court of appeals' decision is to create an unfortunate opportunity for employers to engage in overreaching. See Cheatham, *supra*, at 345. Because credit is given for the first award, the question presented in this case arises only when the employee does not first receive a workers' compensation award in the most advantageous jurisdiction available.[19] Any employee aware of his options would bring his claim initially in the jurisdiction that provides the best benefits, and there would be no occasion for a supplemental award. The rule of the court of appeals simply binds an employee to his first award. The harshness of this rule is apparent. An injured employee often is in no position to determine whether workers' compensation benefits are available in more than one jurisdiction and, if they are, to make an informed choice in which jurisdiction to pursue his claim. The employee's immediate concern is his loss of income, and he is likely to accept any reasonable proposal that would lead to the receipt of benefits quickly.[20] The employer, on

[19] As a general rule, all states requires such a credit so that a supplemented award does not result in double liability for the employer. See generally 4 A. Larson, *The Law of Workmen's Compensation* § 85.70 (1978); *Restatement (Second) of Conflict of Laws* § 182, Comment *b* (1971).

[20] In this case, for example, petitioner entered into an agreement with the respondent under Virginia law within two weeks of the accident and while he was still hospitalized. In relating these facts, we do not intend to suggest that this agreement was the result of any impropriety by respondent.

the other hand, will generally be aware of the relative advantages and disadvantages of the various statutes potentially involved and may be motivated to steer the employee toward an award in a less favorable jurisdiction. See 4 A. Larson, *The Law of Workmen's Compensation* § 85.60 (1978).

The undeniable result of the court of appeals' rule is that an employee's recovery will often be limited to the amount available under the least generous of the applicable statutes. The result of a contrary rule permitting successive awards will generally be that an employee will recover the benefits due under the most generous applicable compensation laws. This result is not unfair to the employer because his liability, as long as the first award is credited against the second, is no greater than it would have been had a well-informed employee chosen the proper jurisdiction in the first place. In view of the strong policy in favor of compensation of injured employees, the latter result is clearly appropriate.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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